

REMARKS

Claims 1-3, 6-34, 6-41 and 59-68 are presently pending in the case. Claims 1, 21 and 22 have been amended. Claims 59-68 have been added. The amendments and new claims are supported by the specification and claims as originally filed.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Claim rejections under 35 USC §102

The Examiner rejected claims 1-3, 6-12, 14, 19-21, 31-34 and 36-39 under 35 USC §102(b) as being anticipated by U.S. Patent 5,753,302 to Sun et al (hereinafter Sun et al '302). The rejection is traversed.

Sun et al '302 does not anticipate independent claim 1, for example. For a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention. Non-disclosure of a single element, feature or limitation of the claim negates anticipation. Claim 1 is to an apparatus for filling a chamber comprising, inter alia, a hopper adapted to contain a bulk supply of a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder through the outlet, wherein the bulk supply of powder is spaced from the vibratable member when the powder pharmaceutical formulation is present in the hopper and when the vibratable member is not vibrating and whereby the chamber may be filled by powder flowing through the outlet and into the chamber. These positively recited features are not disclosed by Sun et al '302. Sun et al '302 does not disclose a vibratable membrane that is spaced from the bulk supply of powder. Instead, Sun et al '302 describes a dispenser for propelling objects towards a substrate. The objects are propelled from a membrane to the substrate. The objects rest on the membrane before they are propelled towards the

substrate (see Figure 2 of Sun et al '302). Furthermore, Sun et al '302 does not disclose an outlet through which powder can flow in a controlled manner. Since Sun et al '302 does not disclose a system where powder is spaced from a membrane when the membrane is not vibrating and does not disclose an outlet as claimed, it does not disclose each and every feature set forth in claim 1, and it therefore does not anticipate the claim.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 2, 3 and 6-21 which depend from claim 1 and are not anticipated by Sun et al '302 for at least the same reasons as claim 1.

Sun et al '302 also does not anticipate independent claim 31. Claim 31 is to a method of filling a chamber, the method comprising, inter alia, providing a bulk supply of a powder pharmaceutical formulation in a hopper and providing a separation between the powder and a vibratable membrane when the vibratable membrane is not vibrating; disturbing a medium in the hopper by vibrating the vibratable membrane to fluidize the powder; and passing the powder through an outlet and into the chamber. Sun et al '302 does not disclose providing a separation between the powder and a vibratable membrane. As noted above, Sun et al '302 operates by propelling objects that are in contact with a vibratable membrane towards a substrate. Thus, Sun et al '302 does not anticipate claim 31.

Applicant requests withdrawal of the rejection of claim 31 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 32-34 and 36-41 which depend from claim 31 and are not anticipated by Sun et al '302 for at least the same reasons as claim 31.

The Examiner rejected claims 1-3, 6, 8, 9, 11-16, 22-24, 28-34, 36, 37, 39 and 40 under 35 USC §102(b) as being anticipated by U.S. Patent 6,168,666 to Sun et al (hereinafter Sun et al '666). The rejection is traversed.

Sun et al '666 does not anticipate independent claim 1, for example. Claim 1 is to an apparatus for filling a chamber comprising, inter alia, a hopper adapted to contain a bulk supply of a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable membrane capable of disturbing a medium within the hopper, the disturbance of the medium being sufficient to control the flow of powder through the outlet, wherein the bulk supply of powder is spaced from the vibratable member when the powder pharmaceutical formulation is present in the hopper and when the vibratable member is not vibrating and whereby the chamber may be filled by powder flowing through the outlet and into the chamber. These positively recited features are not disclosed by Sun et al '666. Sun et al '666 does not disclose a vibratable membrane that is spaced from the bulk supply of powder. Instead, Sun et al '666 describes a dispenser for propelling beads towards a bead collector. The beads are propelled from a mesh to the collector. The beads rest on the mesh before they are propelled towards the collector (see Figure 2 of Sun et al '666). Furthermore, Sun et al '666 does not disclose an outlet through which powder flows in a controlled manner. Since Sun et al '666 does not disclose a system where powder is spaced from a membrane when the membrane is not vibrating and does not disclose an outlet as claimed, it does not disclose each and every feature set forth in claim 1, and it therefore does not anticipate the claim.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 2, 3 and 6-21 which depend from claim 1 and are not anticipated by Sun et al '666 for at least the same reasons as claim 1.

In addition, Sun et al '666 does not anticipate independent claim 22. Claim 22 is to an apparatus for filling a chamber, the apparatus comprising, inter alia, a hopper adapted to contain a bulk supply of a powder pharmaceutical formulation, the hopper comprising an outlet; and a vibratable member spaced from the powder in the hopper when the vibratable member is not vibrating and when the hopper contains powder, the

vibratable member being capable of fluidizing the powder in the hopper, whereby the chamber may be filled with powder flowing through the outlet and into the chamber. Sun et al '666 does not disclose a vibratable member spaced from powder when the vibratable member is not vibrating. As noted above, Sun et al '666 instead discloses a mesh that contacts beads and propels the beads towards a collector. Since Sun et al '666 does not disclose all that is claimed, it does not anticipate claim 22.

Applicant requests withdrawal of the rejection of claim 22 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 23-30 which depend from claim 22 and are not anticipated by Sun et al '666 for at least the same reasons as claim 22.

Sun et al '666 also does not anticipate independent claim 31. Claim 31 is to a method of filling a chamber, the method comprising, inter alia, providing a bulk supply of a powder pharmaceutical formulation in a hopper and providing a separation between the powder and a vibratable membrane when the vibratable membrane is not vibrating; disturbing a medium in the hopper by vibrating the vibratable membrane to fluidize the powder; and passing the powder through an outlet and into the chamber. Sun et al '666 does not disclose providing a separation between the powder and a vibratable membrane. Sun et al '666 operates by propelling beads that are in contact with a vibratable mesh towards a collector. Thus, Sun et al '666 does not anticipate claim 31.

Applicant requests withdrawal of the rejection of claim 31 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 32-34 and 36-41 which depend from claim 31 and are not anticipated by Sun et al '666 for at least the same reasons as claim 31.

The Examiner rejected claims 22 and 25-30 under 35 USC §102(b) as being anticipated by U.S. Patent 5,826,633 to Parks et al (hereinafter Parks et al). The rejection is traversed.

Parks et al does not anticipate independent claim 22, for example. Claim 22 is to an apparatus for filling a chamber, the apparatus comprising, inter alia, a vibratable member capable of fluidizing powder in the hopper that is not in contact with the vibratable member, whereby the chamber may be filled with powder flowing through the outlet and into the chamber. Parks et al does not disclose a vibratable member that fluidizes powder that is not in contact with the vibratable member. Thus, Parks et al does not anticipate claim 22.

Applicant requests withdrawal of the rejection of claim 22 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of the rejection of claims 25-30 which depend from claim 22 and are not anticipated by Parks et al for at least the same reasons as claim 22.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 17, 18 and 41 under 35 USC §103(a) as being unpatentable over Sun et al '666 in view of U.S. Patent 5,858,099 to Sun et al (hereinafter Sun et al '099). The rejection is traversed.

Sun et al '666 and Sun et al '099 do not render claims 17, 18 and 41 unpatentable. Claims 17 and 18 depend from claim 1, and claim 41 depends from claim 33. Claims 1 and 33 are allowable over Sun '666, as discussed above. Since Sun et al '099 does not make up for the deficiencies of Sun et al '666, independent claims 1 and 41 are allowable over Sun et al '666 and Sun et al '099. Therefore, claims 17, 18 and 41 are allowable over Sun et al '666 and Sun et al '099 for at least the same reasons as claims 1 and 41. Applicant requests withdrawal of the rejection of claims 17, 18 and 41 under 35 U.S.C. §103(a).

Claim Amendments and New Claims

Claim 22 has been amended to correct a typographical error. The amendment

has not been made for reasons related to patentability or to further limit the claim.

Claims 59-68 have been added to define other aspects of Applicant's invention.

Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

Dated: 31 OCT 2007

By: 

Guy V. Tucker
Reg. No. 45,302

Please send all correspondence to:
Guy Tucker
Janah & Associates
650 Delancey Street, Suite 106
San Francisco, CA 94107
Phone: (415) 538-1555
Fax: (415) 538-8380